



101422

DM-10/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

Application of: Chet M. Crump, et al.
Serial No: 09/716,486
Filed: November 20, 2000
Confirmation No: 8937
For: Respiratory Suction Catheter Apparatus With
Improved Valve And Collar

Group Art Unit: 3743
Examiner: Joseph Francis Weiss, Jr.
Our Customer ID: 22827
Our Account No: 04-1403
Attorney Ref: BAL-66-CON-RCE
(BA00118.4)

Sir:

1. **NOTICE OF APPEAL:** Pursuant to 37 CFR 1.191, Applicant hereby appeals to the Board of Appeals from the decision dated _____ of the Examiner finally rejecting claims 1-12.
2. **BRIEF** on appeal in this application pursuant to 37 CFR 1.192 is transmitted herewith in triplicate.
3. An **ORAL HEARING** is respectfully requested under 37 CFR 1.194 (due within one month after Examiner's Answer).
4. Reply Brief under 37 CFR 1.193(b) is transmitted herewith in triplicate.
5. "Small entity" verified statement filed: herewith previously.

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ADDRESS:

Post Office Box 1449
Greenville, SC 29602 USA

DORITY & MANNING, P.A.

By: Neal P. Pierotti Reg. No.: 45,716

Telephone: 864-271-1592

Signature: Neal P. Pierotti

Faxsimile: 864-233-7342

Date: May 3, 2004

I hereby certify that this correspondence and any referenced attachment and fee are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, U.S. Patent and Trademark Office, Post Office Box 1450, Alexandria, VA 22313-1450, on May 3, 2004.

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Denise Bulkeley
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ATTORNEY DOCKET NO: BAL-66-CON-RCE (BA 00118.4)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: Chet M. Crump, et al.) Examiner: Joseph Weiss, Jr.
Serial No: 09/716,486) Group Art Unit: 3743
Confirmation No: 8937) Our Customer No: 22827
Filed: November 20, 2000) Our Account No: 04-1403
Title: Respiratory Suction Catheter Apparatus)
With Improved Valve and Collar)

REPLY BRIEF

Honorable Commissioner of
Patents and Trademarks
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Alexandria, VA 22313-1450

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TECHNOLOGY CENTER R3700

Dear Sir:

Applicants' hereby submit this Reply Brief in accordance with 37 CFR §1.193(b) (1) for the above-captioned application. The Examiner's Answer was mailed on March 4, 2004. Applicants have read the Examiner's Answer and respectfully disagree with several points raised therein as noted in the present Reply Brief. Also In the current Reply Brief, Applicants would like to direct the Board's attention to certain issues left unchallenged by the Examiner in response to the Applicants' Appeal Brief.

Page 10 of the Examiner's Answer states that the 3-way stopcock valve 16 in Niermann may be positioned into an undisclosed "fourth" position, the end result of which would cause the lavage port to be positioned so as to be in fluid communication with the annular space between the suction catheter and the adaptor

when the suction catheter is present. The Examiner's Answer states that motivation for reconfiguring the 3-way stopcock valve 16 into the "fourth" position comes from Russo because Russo discloses a suction catheter 44 inside of a fitting 32 in communication with a lavage port 37/38 (see the last paragraph on page 10 extending onto page 11 of the Examiner's Answer).

Russo does not provide motivation for reconfiguring Niermann in the manner suggested in the Examiner's Answer. First, both Niermann and Russo disclose a lavage port in fluid communication with a suction catheter that is surrounded by a fitting or other device. For instance, Fig. 5 of Russo already shows a suction catheter 44 surrounded by a fitting 32 in communication with a lavage port 37/38. Likewise, Niermann shows in Fig. 2 a catheter 18 that is surrounded by a tubular member 62 in fluid communication with a lavage port 40. As such, Russo would not serve to motivate one skilled in the art to modify Niermann because Russo discloses the exact same structure in Fig. 5 already disclosed in Fig. 2 of Niermann.

One having ordinary skill in the art would not modify Niermann in order to place this reference into the "fourth" position suggested by the Examiner upon viewing either Niermann or Russo. Although Fig. 5 of Russo shows the lavage port 37/38 in fluid communication with the suction catheter 44 and fitting 32, Russo does not disclose the lavage port 37/38 to be in fluid communication with the patient's artificial airway through the cylindrical space defined by the suction catheter 44 and fitting 32. As can be seen in Fig. 5, valve 27 (which may be opened only upon a user depressing buttons 25) is closed, thus preventing any fluid communication between the lavage port 37/38 and the patient's artificial airway. As stated in Applicants' Appeal Brief, Russo is provided with an irrigation port 17 in order to

provide lavage to the patient's artificial airway, and the lavage port 17 is isolated from the catheter 44 due to the valve 27.

The Examiner's Answer also fails to address the fact that Niermann is specifically directed towards a device that does not allow lavage solution to contact the catheter while at the same time being in fluid communication with the patient's artificial airway (see column 1, lines 13-29 of Niermann). The Examiner's answer fails to provide an adequate explanation as to why one of ordinary skill in the art would reconfigure Niermann even though this reference explicitly teaches that **lavage solution should be applied to the catheter in complete isolation from the patient's artificial airway (see Niermann at column 1, lines 38-45).**

The Examiner's Answer fails to recognize the fact that Russo explicitly identifies Niermann as a disfavored/inferior device. The full disclosure of a reference must be considered in its entirety when determining whether this patent may be combined with another or whether this patent teaches the subject matter of Applicants' claims (see the last paragraph on page 10 of Applicants' Appeal Brief that extends onto page 11). The Examiner's Answer does not address the fact that Niermann explicitly states that a purpose of the invention is to avoid having irrigation fluid contact the catheter while at the same time being capable of being directed towards a patient. Likewise, the Examiner's Answer fails to address the fact that Russo actually names Niermann in the specification and states that various portions of Niermann are unfavored.

The last sentence on page 9 of the Examiner's Answer states that Russo was provided in order to motivate one to rearrange Niermann because Russo discloses a "lavage port positioned to be in fluid communication with the annular space between

the suction catheter and the adaptor when the suction catheter is present.” However, this arrangement is already disclosed in Fig. 2 of Niermann, and this arrangement fails to disclose structure in claim 1 that calls for the lavage port to be in fluid communication with the patient’s artificial airway through the cylindrical space and the adaptor. The Examiner’s Answer does not point to anything in Russo that would enable one of ordinary skill in the art to modify Niermann to attain this structural language set forth in claim 1. Further, the Examiner’s Answer does not explain why one of ordinary skill in the art would reconfigure Niermann in this manner given the fact that Niermann explicitly states that such a structure is disfavored.

Applicants respectfully submit that claims 1-12 are patentable under 35 U.S.C. §103(a) in view of the prior art. Applicants respectfully submit that the final rejection of claims 1-12 should be reversed, and that these claims should be allowed to issue in a U.S. Patent.

Respectfully submitted,

DORITY & MANNING, P.A.

May 3, 2004
Date:


Neal P. Pierotti
Reg. No. 45,716
P.O. Box 1449
Greenville, SC 29602-1449
(864) 271-1592
Facsimile (864) 233-7342